

## Chapter 37

### PUBLIC UTILITIES\*

Art. I.	In General, §§ 37-1—37-20
Art. II.	Communication Between Public Utilities and the City, §§ 37-21—37-35
Art. III.	Filing Requirements, §§ 37-36—37-70 Div. 1. Generally, §§ 37-36—37-50 Div. 2. Rate Filing Packages, §§ 37-51—37-70
Art. IV.	Hearings, §§ 37-71—37-115 Div. 1. Generally, §§ 37-71—37-85 Div. 2. Examiners, §§ 37-86—37-115
Art. V.	Standards of Service, §§ 37-116—37-200
Art. VI.	Cable Television Services, §§ 37-201—37-258 Div. 1. Cable Television Rate Regulation, §§ 37-201—37-220 Div. 2. Access to Public, Educational, and Governmental Cable Channels by Other Municipalities, §§ 37-221—37-250 Div. 3. State-Issued Cable or Video Franchises, §§ 37-251—37- 258

#### ARTICLE I. IN GENERAL

##### Sec. 37-1. Definitions.

(a) The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Act* means the Public Utility Regulatory Act, being article 1446c of the Revised Civil Statutes of Texas, as amended.
- (2) *Director* means the director of finance and administration or his designee(s).
- (3) *Regulatory authority* means the city council of the city.

(b) The definitions of the words and terms set forth in sections 3 and 41 of the Act are hereby adopted and shall apply herein with the same force and effect as if set forth in this chapter. (Code 1968, § 38-1; Ord. No. 81-1589, § 1, 8-18-81; Ord. No. 86-528, § 19, 4-22-86)

##### Sec. 37-2. Scope.

The provisions of this chapter shall not apply to any municipally-owned public utility of the city. (Code 1968, § 38-2; Ord. No. 81-1589, § 1, 8-18-81)

##### Sec. 37-3. Public utility improvements on city property.

(a) It shall be unlawful for any public utility or public service company or corporation, its officers, agents or employees to make, construct or install any character of improvements, changes or new service along, upon, under or through the streets or public property of the city without first having obtained written consent therefor from the city council.

(b) Any public utility or public service company must within thirty (30) calendar days after receipt of written request therefor by the city relocate any of its facilities situated within any street or other public right-of-way or property at no expense to the city where reasonable and necessary to accommodate street widening, water and/or sewer service installation or other improvement projects and maintenance work of the city, its agents and contractors. (Code 1968, § 38-3; Ord. No. 81-1589, § 1, 8-18-81)

##### Sec. 37-4. Street lighting.

Any person having a franchise to furnish and distribute electrical energy for domestic and commercial uses within the city shall, when ordered

\*Cross references—Removal or destruction of utility poles or wires in connection with moving of buildings, § 10-70; posting advertising matter on utility poles, § 28-39; identification cards for utility company employees, § 28-23; special provisions for surveys made by public utilities, § 33-66; railroads, Ch. 38; streets and sidewalks generally, Ch. 41; installation of street lights at expense of property owner, § 40-3; vehicles for hire, Ch. 46; water and sewers, Ch. 47.

by the city council so to do, furnish, install, operate and maintain, at its own cost, street lights of a candle power and general character, at designated locations, and charge the city therefor at schedules as agreed upon. Bills for the same shall be payable monthly in equal installments. Such street lights need not be installed, maintained and operated until the city and the person supplying same have reached an agreement as to service terms for the provision thereof and the charges to be paid therefor by the city.  
(Code 1968, § 38-4; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-5. Installations to be made subject to ordinances.**

All electrical installations, whether for arc lights, commercial lighting or power service, shall be made subject to all of the ordinances of the city which may now exist or which may hereafter be adopted.  
(Code 1968, § 38-5; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-6. Uniform accounts.**

Every electric utility and water and/or sewer utility shall keep uniform accounts as prescribed from time to time by the Texas Public Utility Commission. Every gas utility shall keep uniform accounts as prescribed from time to time by the Texas Railroad Commission.  
(Code 1968, § 38-6; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-7. Copies of rate schedules.**

Every public utility furnishing service within the city shall maintain on file at its principal office in this city in printed form one copy of all established schedules of rates for service. The same shall be made available for examination during regular business office hours of the public utility to any person who shall apply therefor.  
(Code 1968, § 38-7; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-8. Compliance with law.**

To the extent of any conflict between any of the terms or provisions of this chapter and any state or federal law, rule or regulation, including without limitation, the Act and the Administrative Procedure and Texas Register Act (Article 6252-13a of the Revised Civil Statutes of Texas, as

amended) which has precedence over this chapter as a matter of law, the provisions of such state or federal law, rule or regulation shall prevail.  
(Code 1968, § 38-8; Ord. No. 81-1589, § 1, 8-18-81)

**Secs. 37-9—37-20. Reserved.**

**ARTICLE II. COMMUNICATION  
BETWEEN PUBLIC UTILITIES AND THE  
CITY**

**Sec. 37-21. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Public utility* means a "public utility" as that term is defined in the Act as to which the city acting through the city council constitutes a regulatory authority having original jurisdiction.
- (2) *Regulatory chain* means the mayor, the city council, the city attorney, the director and any other employees of the city whose duties are directly connected, in whole or in part, with the regulation of rates and services of public utilities. Staff members employed by the persons enumerated above are in the regulatory chain if their assigned duties relate to the regulation of public utility rates and services. City employees who deal with public utilities on matters not involving the regulation of rates and services are not within the regulatory chain.

(Code 1968, § 38-10; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-22. Agents of city designated.**

The principal avenue for communications intended to affect the decisions of the regulatory authority on matters regarding the regulation of public utility rates and services shall be in open session of the city council. The principal contact for communications regarding the day to day supervision of regulated utility companies by the

city and regarding matters under review by the city shall be the director.

(Code 1968, § 38-11; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-23. Records to be kept.**

Each person in the regulatory chain shall maintain a permanent record of all communications, oral and written, with officers, owners, employees and other representatives of public utilities, their holding companies or affiliates. Such record shall be maintained in the form of a log upon forms prescribed and furnished by the director.

(Code 1968, § 38-12; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-24. Communications to be kept in log.**

The log shall include each and every such communication other than the following:

- (1) Routine inquiries initiated by the finance and administration department or other city agencies and departments.
- (2) Communications deemed confidential by law.
- (3) Communications between attorneys relating to litigation and settlement negotiations between the city and the utility once a lawsuit has been filed.
- (4) Contacts by the utility with city employees which do not pertain to the regulation of rates and services including, but not limited to, liaison with the city regarding street cuts or easements, the use of property by the parks and recreation department, the payment of taxes and the settlement of claims.

(Code 1968, § 38-13; Ord. No. 81-1589, § 1, 8-18-81; Ord. No. 86-528, § 20, 4-22-86)

**Sec. 37-25. Data to be included in log.**

All entries in the aforementioned logs shall be made by the person required to keep the same at or near the time of the communication and for each communication which is required to be included the person shall indicate:

- (1) The names of the parties.
- (2) The date of the communication.
- (3) A brief description of the subject matter of the communication.

Supp. No. 5

- (4) The action requested, if any.

- (5) Whether the communication was oral or written.

(Code 1968, § 38-14; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-26. Log furnished to director and inspection thereof.**

On or before the tenth day of each calendar month each such person shall furnish a copy of his log for the last preceding calendar month to the director, provided that the same need not be furnished if no entries were required to be made therein during such calendar month. The director shall maintain a cumulative file of all logs submitted, and the same shall be available for public inspection during the director's regular business hours.

(Code 1968, § 38-15; Ord. No. 81-1589, § 1, 8-18-81)

**Secs. 37-27—37-35. Reserved.**

**ARTICLE III. FILING REQUIREMENTS**

**DIVISION 1. GENERALLY**

**Sec. 37-36. Definition.**

As used in this article, "utility" means a "public utility" as that term is defined in the Act as to which the city acting through its city council constitutes a regulatory authority having original jurisdiction.

(Code 1968, § 38-20; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-37. Interpretation.**

The provisions of this article shall not be construed to relieve any utility of its obligation to file with and make available to the city, the director, or any other city officer or agency, any information not specified in this article which is required to be furnished or made available by state law. Furthermore, each utility shall file, furnish and make available to the director, within such time limits as he reasonably prescribes, all information that the director may from time to time lawfully request.

(Code 1968, § 38-21; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-38. Waiver of reports, etc.**

The director may waive the filing of any report or item of information required by this article which is not otherwise required to be provided by law if the director determines that the filing thereof is either impractical or unduly burdensome upon the utility which would otherwise be required to file the same. Such waiver shall be effective only if requested by the utility in writing and granted by the director in writing.

(Code 1968, § 38-22; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-39. Permanent file.**

(a) Each utility shall furnish to the director such informative documents, maps and other written materials, from time to time, as may be necessary for the director to maintain a complete and current permanent information file for such utility including the following:

- (1) The utility's (and its controlling company's, if any) functional/divisional organization chart.
- (2) The utility's chart of accounts detailing each account number and account title.
- (3) A detailed explanation of the accounting procedures for all intercompany and interdepartmental allocations of shared cost and intercompany and interdepartmental charges for the utility (or the controlling company, if any).
- (4) A complete list of fuel contracts; additionally, each utility shall notify the director of and make available to the director each fuel purchase, fuel sale, and fuel exchange contract affecting the system (in the case of electric utilities) or division (in the case of gas utilities) in question.
- (5) A detailed map of the service area of the relevant system or division of the utility.
- (6) The utility's complete tariff schedules which are currently in force for service within the area of jurisdiction of the city.

(b) Each amendment, revision or addition to the information required in such permanent file shall, insofar as may be practicable, be furnished to the director by the utility as soon as reason-

ably possible, but, without exception, prior to filing any statement of intent to change rates.

(Code 1968, § 38-23; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-40. Periodic information file.**

(a) Each utility shall furnish to the director such information, documents and other written materials, from time to time, as may be necessary for the director to maintain a complete and current periodic information file for such utility including the following:

- (1) Two (2) copies of each and every report or other document containing operating or financial information which the utility files with the United States Securities and Exchange Commission or Federal Energy Regulatory Commission.
- (2) One copy of each and every written report affecting the system or division which the utility files with or furnishes to the Texas Public Utility Commission, Texas Railroad Commission or Texas Attorney General.
- (3) One copy of each and every public report which the utility furnishes to its stockholders.
- (4) Two (2) copies of each and every response made by the utility (and its controlling company, if any) or on behalf of the utility by its independent auditors to the Financial Accounting Standards Board regarding exposure drafts or statements proposed by the Financial Accounting Standards Board that will materially affect the utility's operations.

(b) The documents enumerated in categories (a)(1) through (a)(4), inclusive, shall be furnished to the director at or about the same time that they are provided to the person or persons for which such documents were prepared.

(Code 1968, § 38-24; Ord. No. 81-1589, § 1, 8-18-81)

**Secs. 37-41—37-50. Reserved.****DIVISION 2. RATE FILING PACKAGES****Sec. 37-51. Required.**

All statements of intent to change rates which are filed by any utility with the city pursuant to

section 43 of the Act shall be in duplicate originals with one counterpart to be filed with the director and the other counterpart to be filed with the city secretary. If the two (2) counterparts are not filed on the same date, then the later of the filing date with the city secretary or the director shall constitute the date of filing for all purposes. All such statements of intent shall include the information specified in this division.

(Code 1968, § 38-30; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-52. Additional information permitted.**

A utility may submit such additional information as it considers relevant and appropriate.

(Code 1968, § 38-31; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-53. Adoption by reference.**

A utility may adopt by reference any information required by this division which has been previously furnished to the director in a previous rate filing package or has been previously furnished to the director pursuant to division 1 of this article, provided that such information was furnished in the same form and format required by this division and further provided that such adoption by reference specifies the name or title of the document referred to, its filing date with the director and the relevant page or section number thereof.

(Code 1968, § 38-32; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-54. Forms.**

For the convenience of the utilities in assembling the information required in this division and for the sake of the convenience of the city in interpreting the information, the director may prescribe forms and formats for the submission of the information required in this division. Each utility shall comply with all applicable forms and formats which have been so prescribed.

(Code 1968, § 38-33; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-55. Affidavit required.**

Each rate filing package and supplement or addendum thereto shall be submitted in the form of an affidavit or have an affidavit attached thereto setting forth that all information contained therein

is true and correct. Such affidavit shall be executed by:

- (1) The owner, if the utility is a proprietorship.
- (2) A general partner, if the utility is a partnership.
- (3) The corporate president, any vice-president or secretary, if the utility is a corporation.

(Code 1968, § 38-34; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-56. Statement of intent to contain all required information.**

For purposes of the time limits set forth in section 43 of the Act, no statement of intent shall be deemed filed with the city unless and until it contains substantially all the information called for in this division; however, a statement of intent shall be deemed to be sufficiently complete to start the time limits of section 43 of the Act running, unless the director, within ten (10) days of the time the statement is filed in the case of changes which are not major changes and within thirty (30) days of the time the statement is filed in the case of major changes, notifies the utility of insufficiency of the statement. Each such notice shall be in writing and shall specify each insufficiency with particularity. In the event such notice is given, the time limits specified in section 43 of the Act shall start running as of the time that all of such insufficiencies are corrected.

(Code 1968, § 38-35; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-57. Statements of intent regarding rate changes which are not major changes.**

Statements of intent to change rates in a manner which will not constitute a "major change" as that term is defined in section 43 of the Act shall include the following information:

- (1) A complete set of the proposed tariff revisions.
- (2) A statement specifying in detail the classes and numbers of utility customers affected, and the change in gross revenues (in absolute dollar amounts and in percentage terms, by customer class and by total) that the utility expects the revised tariffs to furnish as opposed to those furnished by existing tariffs.

- (3) All other information, if any, required by the Act.
- (4) A statement that the proposed change of rates if authorized will not effect a "major change" as that term is defined in section 43 of the Act.

(Code 1968, § 38-36; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-58. Statements of intent regarding major changes.**

Statements of intent to increase rates in a manner which would constitute a "major change" in rates, as that term is defined in section 43 of the Act, shall include all information required in this section as well as all additional information, if any, that may be required by the Act. In the case of electric utilities, the requested information shall be for the entire electric system in question, even if that system extends beyond the city limits, unless another basis is specified herein. In the case of gas utilities, the requested information shall be for the entire division in question even if that division extends beyond the city limits, unless another basis is specified herein. In the case of water or sewer utilities, the requested information shall be for the entire water or sewer system in question, even if that system extends beyond the city limits, unless another basis is specified herein. The elements comprising the major change filing package are in the following:

(1) *Summary information:*

- a. A complete set of proposed tariff revisions;
- b. A statement specifying in detail each proposed tariff revision, the classes and numbers of utility customers affected, and the change in gross revenues (in absolute dollar amounts and in percentage terms—each by customer class and by total) that the utility expects the revised tariffs to furnish as opposed to those furnished by existing tariffs;
- c. A schedule comparing under current tariffs the income statements of the system or division for the test year and the twelve-month period immediately previous to the test year, together with a description of all substantial changes reasonably antici-

pated by the utility to occur during the projected fiscal year;

- d. A schedule comparing the capital structure of the utility for the test year and the twelve-month period immediately previous to the test year, with a description of all substantial changes reasonably anticipated by the utility to occur during the projected fiscal year. [Note: If any component of the capital of the utility is not obtained primarily through its own financing, but rather is obtained primarily from a company which controls the utility ("controlling company"), then the capital structure information shall be both for the controlling company on a consolidated basis and for the utility. If the utility controls any other companies, then the capital structure information shall be both for the utility on a consolidated basis and for the utility on an unconsolidated basis];
- e. A schedule showing gross plant in service of the system or division and a breakdown by functional classification of construction work in progress for the test year;
- f. A schedule showing forecasted construction expenditures of the system or division for the three (3) years following the test year. [Note: Such schedule shall, to the extent possible, show expenditures on major projects separately];
- g. A schedule showing the rates of return (on an actual and adjusted basis) for the test year on the original cost rate base of the system or division (thirteen-month average) and the book common equity of the utility (thirteen-month average), together with an explanation of the basis on which those rates of return were calculated; and
- h. A schedule in the same format as reported to stockholders, setting forth the balance sheets of the utility and the system or division at the end of the test year and at the end of the twelve-month period immediately previous to the test year.

(2) *Rate base information:*

- a. A schedule showing for the test year the components of the system's or division's original cost rate base, current cost rate base, and adjusted value rate base calculated in accordance with those weighing factors set forth in subparagraph (2)b. below;
- b. A schedule showing the weighing factors which the utility suggests should be used in determining the adjusted value rate base and setting forth the rationale for the use of such weighing factors;
- c. A schedule setting forth the following elements of the system's or division's plant in service accounts:
  1. The book dollar amount of plant in service classified by major accounts of the applicable uniform system of accounts, as of the beginning of the test year;
  2. The book additions and reductions during the test year to such major accounts; and
  3. The balances of such accounts at end of the test year;
- d. A schedule showing for each of the twelve (12) months in the test year the monthly book balance of all of the system's or division's plant in service, classified by production, transmission, distribution, and general in the case of electric and water utilities, and classified by distribution and general in the case of gas utilities;
- e. A schedule showing, for the system or division, gross plant in service and a breakdown by functional classification of construction work in progress for the test year, together with a description of all administrative and general expenses related to construction (including the methods and procedures followed in capitalizing interest during construction);
- f. A schedule showing for the system or division:
  1. The accumulated provisions, as of the beginning of the test year, for depreciation and amortization of plant in service classified to the extent available by production, transmission, distribution, and general in the case of electric utilities; by distribution and general in the case of gas utilities; and by transmission, distribution, and general in the case of water or sewer utilities;
  2. The book additions and reductions to such provisions during the test year; and
  3. The balance of such provisions at the end of the test year;
- g. A schedule showing for each of the twelve (12) months in the test year the system's or division's monthly book balances of the accumulated provisions for depreciation and amortization of plant in service;
- h. A schedule showing the determination of current cost of the system's or division's plant in service, including an explanation of the methods and calculations used in arriving at such costs;
- i. A schedule showing the determination of the adjustment for both age and condition of the system's or division's plant in service, including an explanation of the methods and calculations used;
- j. For electric utilities only, a schedule showing plants under construction or included in the construction budget itemized by:
  1. Name of unit;
  2. Capacity of unit;
  3. Date in service or estimated date in service;
  4. Estimated total cost;
  5. Cost at the beginning of the test year and end of test year;
  6. Estimated annual cost from the test year end until placement in service;
  7. Purpose of unit (replacement or growth); and
- k. For water and sewer and gas utilities, a schedule showing facilities under construction or included in the construction budget itemized by:
  1. Date in service or estimated date in service;
  2. Estimated total cost;
  3. Cost at the beginning and end of test year;

4. Estimated annual cost from test year end until placement in service;
5. Purpose of construction (replacement or growth);
- l. For electric utilities only, a schedule showing the following information:
  1. Historical heat rate by plant for the five (5) fiscal years previous to the test year end;
  2. Heat rate used for conversion;
  3. Historical fuel mix for the five (5) fiscal years previous to the test year end;
  4. Current fuel mix at the time of filing;
  5. Historical generating mix for the five (5) years previous to the test year end; and
  6. Generating mix used at the time of filing;
- m. A schedule of planned retirements by major generating unit in the case of electric utilities, major transmission or distribution unit in the case of water and sewer utilities, and major distribution unit for gas utilities over the five-year period after the test year end;
- n. A schedule showing the computation of the utility's allowance for funds used during construction rate; also an explanation of the utility's policy regarding the capitalization of allowance for funds used during construction which includes limits on projects, amounts, and timing;
- o. A schedule showing the utility's plant held for future use including the reason that the plant or property is being held for future use and the anticipated date such plant or property will be placed into service;
- p. A schedule showing the amount of construction work in progress requested by the utility at the end of the test year; such schedule shall be itemized by major project and shall show the estimated date of placement in service and the estimated cost of each project at the time of placement in service;
- q. A schedule showing the monthly balance of construction work in progress during the test year, the monthly balance used to calculate the charge to the allowance for funds used during construction during the test year, and the monthly charge to the allowance for funds used during construction during the test year;
- r. A schedule showing the amount of construction work in progress requested by the utility that will not increase the capacity of the applicable system or division;
- s. A schedule showing the computation of the working capital allowance requested by the system or division; this schedule shall include for each of the twelve (12) months in the test year the monthly book balances during the test year for materials and supplies (excluding appliances), prepayments, and (in the case of electric utilities only) fuel. [Note: The fuel allowance requested by the utility should also show monthly quantities measured in oil barrels or gallons and coal tons. Additionally, the average monthly purchase price per unit (barrels, gallons, or tons) shall be shown for each month within the test year. Additionally, an explanation and detailed reconciliation must be given regarding the treatment of merchandising and jobbing related to receivables and payables in the determination of working capital, if applicable];
- t. A schedule listing the banking and depository institutions from which records can be supplied to compute the total daily bank balances by day for the test year, including cash, special deposits, working funds, and temporary cash investments;
- u. A copy of a lead-lag study and supporting workpapers which may have been performed and used by the utility in requesting its proposed working capital allowance;
- v. A schedule showing the balance of the unamortized investment tax credit, showing remaining balances generated before 1971 and since 1971;
- w. A schedule showing the vintage years and balance by vintage year that are included in the utility's unamortized investment tax credits;



- x. A schedule showing the monthly balance of customer deposits and the associated interest for each month during the test year;
  - y. A schedule showing the monthly balance of contributions in aid of construction and customer advances during the test year and an explanation regarding the treatment of these items in the utility's rate application;
  - z. If applicable, a schedule showing the utility's annual accruals and charges against the insurance reserves for the past five (5) years, including an explanation of when and how the insurance reserves were established and how the annual accrual amount was established;
  - aa. An explanation of the purpose of receivables from associated companies and payables to associated companies, where applicable;
  - bb. A schedule showing the amount and details of any transactions related to property, plant and equipment between the utility and any subsidiary or any other utility; and
  - cc. A schedule showing the percentage overall rate of return requested by the utility on the original cost rate base, current cost rate base, and adjusted value rate base and the general reasons and justifications for the requested rate of return in narrative form.
- (3) *Cost of capital information.* [Note: If any component of the capital of the utility is not obtained primarily through its own financing, but rather is obtained primarily from a company which controls the utility ("controlling company"), then the cost of capital information submitted hereunder shall be both for the controlling company on a consolidated basis and for the utility. If the utility controls any other companies, then the cost of capital information submitted hereunder shall be both for the utility on a consolidated basis and for the utility on an unconsolidated basis.]
- a. A schedule showing the capitalization of the utility (and controlling company, if any) at the end of the test year and the latest date available (broken down by the following components: Short-term debt, long-term debt, preferred equity, and common equity), all pro forma adjustments to the capitalization (with supporting details), the cost of each component of capitalization, and the weighted overall cost of capital;
  - b. A schedule showing, for each series of the utility's (and the controlling company's, if any) long-term debt outstanding at the end of the test year and the latest date available, the following information:
    1. Title of the debt issue;
    2. Date of issuance and date of maturity;
    3. Interest rate;
    4. Principal amount of issue and gross proceeds;
    5. Underwriter's discount or commission and amount;
    6. Issuance expense including amount, percent gross proceeds, net proceeds and net proceeds per unit;
    7. Cost of money: yield to maturity based on the interest rate and net proceeds per unit outstanding determined by reference to any generally accepted table of bond yields;
    8. If the issue is owned by an affiliate of the utility (or the controlling company, if any), state the name of the affiliate and its relationship to the utility (and the controlling company, if any); and
    9. If the utility (or the controlling company, if any) has acquired at a discount or premium some part of the outstanding debt which could be used in meeting sinking fund requirements or for other reasons, it shall show the annual amortization of the discount or premium for each series of debt from the date of acquisition over the remaining life of the debt being retired and shall separately show the total remaining or unamortized discount and premium, as a result of such amortization, applicable to the test year;

- c. A schedule showing the monthly balances of short-term debt, excluding the current portion of long-term debt, for the utility (or controlling company, if any), during the test year and the latest date available, including the following information:
    - 1. Title of the issue and lender name (bank loan, commercial paper, etc.);
    - 2. Date of issuance and maturity;
    - 3. Interest rate;
    - 4. Principal amount of issue;
    - 5. Compensating balance, if any, including the supporting compensating balance agreement; and
    - 6. Interest expense including the cost of money computed as the interest rate divided by net proceeds per unit outstanding; if the issue is owned by an affiliate of the utility (or the controlling company, if any), then the name of the affiliate, its relationship to the utility (and the controlling company, if any) and an explanation of the method of determining the interest rate shall be stated;
  - d. A schedule showing for each class and series of preferred and preference stock of the utility (and the controlling company, if any) outstanding at the end of the test year and the latest date available, the following information:
    - 1. Title of the stock issue;
    - 2. Date of issuance;
    - 3. If callable, the call price;
    - 4. If convertible, the terms of conversion;
    - 5. Par or stated amount of issue and gross proceeds;
    - 6. Underwriter's discount or commission and amount;
    - 7. Issuance expenses including amount, percent gross proceeds, net proceeds and net proceeds per unit;
    - 8. Cost of money: dividend rate divided by net proceeds per unit;
    - 9. Whether the issue was offered to stockholders through subscription right or to the public; and
    - 10. If the issue is owned by the affiliate to the utility (or the controlling company, if any), state the name of the affiliate and its relationship to the utility (and the controlling company, if any);
  - e. A schedule showing the details of any anticipated financing of the utility (and controlling company, if any) over the twelve-month period immediately succeeding the test year, including:
    - 1. Title of the issue;
    - 2. Date of issuance and maturity, if applicable;
    - 3. Interest or dividend rate, if applicable;
    - 4. Principal amount of issue;
    - 5. Discount, premium, and debt expense, if applicable; and
    - 6. Cost of money, where applicable;
  - f. A schedule showing the utility's (or controlling company's, if any) yearly high and low common stock prices for the ten (10) years preceding the test year, where applicable;
  - g. A schedule showing the utility's (or controlling company's, if any) monthly high and low common stock prices during the test year, where applicable;
  - h. A schedule showing the computation of the utility's (and the controlling company's, if any) times interest earned ratio and fixed charge coverage ratio (by Securities and Exchange Commission method) before and after taxes for the actual test year and for the test year adjusted to take into account all pro forma adjustments and the requested revenue increase; and
  - i. A schedule providing a summary of the utility's (and the controlling company's, if any) debt instrument fixed charge requirements plus any other pertinent information (such as restrictions) pertaining to the issuance of the debt.
- (4) *Income information:*
- a. A schedule setting forth for the utility and the relevant system or division, the test year income statement, all pro forma adjustments to the test year income statement, and an adjusted test year income statement taking into account such pro forma adjustments;

- b. A schedule showing the details of all pro forma adjustments to the test year income statements referred to in (4)a above, with a full explanation of the methods and calculations on which said pro forma adjustments are based;
- c. A schedule setting forth monthly detailed net income statements of the utility, and the relevant system or division, for the test year, showing revenues by customer class and showing detailed operating expenses;
- d. A schedule showing actual sales by month (KWH, MCF, or MGD where applicable and revenue) of the utility by customer classification for the twelve (12) months during the test year and projected annual sales (units and dollars) for the next three (3) years subsequent to the test year end;
- e. For electric and gas utilities, a schedule showing the monthly amount of fuel adjustment revenue by customer class and in total for the twelve (12) months during the test year;
- f. For electric and gas utilities, a narrative explanation of items or customers which are not subject to the current or proposed fuel adjustment;
- g. For electric and gas utilities, a schedule showing the computation of the fuel adjustment amount for each month during the test year;
- h. A schedule showing the number of customers by customer classification of the utility by month during the test year and the projected annual number of customers by customer classification for the period subsequent to the test year end during which the requested rates are to be in effect;
- i. A schedule showing utility personnel by department for the utility for the three (3) years prior to the test year end, during the test year, and budgeted for the period subsequent to the test year end during which the requested rates are to be in effect;
- j. The utility's current and proposed wage contracts, where applicable;
- k. A schedule showing rate case expenses incurred at the time of the filing and estimated rate case expenses for the utility and outside expert witnesses; the schedule should itemize:
  - 1. The salary, expenses and allocations thereof to the filing for each expert retained (other than a regular salaried employee of the utility), whether such person is expected to testify upon the hearing of the rate case or not;
  - 2. All materials and supplies cost;
  - 3. Any other costs associated with the filing preparation and hearings;
- l. A schedule reconciling book net income of the utility with taxable net income as reported to the Internal Revenue Service for the most recent year for which a tax return was filed and the previous three (3) years;
- m. A schedule showing the tax computation for the relevant system or division of the utility during the test year and all supporting workpapers;
- n. A schedule showing the computation of consolidated income taxes for the utility and for the controlling company, if any, during test year operations;
- o. A schedule showing a reconciliation of the treatment of allowance for funds used during construction (AFUDC) for both book and tax purposes for the utility during the test year; this schedule shall be accompanied by a narrative explanation;
- p. A schedule showing the depreciation rates used by the utility in its filing classified by major plant accounts;
- q. A schedule indicating for the utility the date of the most recent change in depreciation lives and studies supporting such a change in depreciable asset lives and corresponding depreciation rates;
- r. A schedule showing the computation of the incremental gross revenue conversion factor for the relevant system or division;
- s. A schedule showing the amounts expended by or allocated to the utility and the relevant system or division during the test year, with the corresponding amount for:

business gifts, entertainment, charitable or civic contributions, membership in social, recreational, fraternal or religious clubs or organizations, institutional advertising, conversational advertising, consumption-inducing advertising, and other advertising;

- t. A schedule showing the amounts expended by or allocated to the utility and the relevant system or division (other than salary or wages subject to withholding of federal income tax) for:

1. Legal representation in Texas;
2. Representation before the Texas Legislature;
3. Representation before any other governmental agency or body in Texas;
4. Representation before any federal governmental agency or body;

[Note: This statement shall include the actual expense for the test year, with any adjustments for known changes, and the actual expenses for the last odd-numbered calendar year]; and

- u. A schedule showing the net income or loss resulting from the sale or lease by the utility, and the relevant system or division, of appliances, fixtures, equipment, or other merchandise.

(5) *Rate design information:*

- a. A schedule showing for the utility, and the relevant system or division, the following test year information for each customer class:

1. The designation of the class;
2. The total number of customers of the class;
3. The total consumption in KWH, MCF or MGD of the customer class; and
4. The total revenues derived from customers of the class;

- b. A schedule showing for the relevant system or division and for the test year a bill frequency or other analysis showing consumption and number of bills at each rate and for each customer class for which the utility maintains such records in the normal course of business;

- c. A schedule showing the utility's current and proposed rates of return by customer class under the allocation methods proposed by the company; provided, however, if the utility has a cost of service study on file with the department, then this schedule may be omitted; [Note: the utility shall make available to the director all relevant workpapers used to derive such rates];

- d. A schedule showing the following utility statistics for the past five (5) years from the test year end and subsequent period during which the requested rates are to be in effect:

1. Consumptions (KWH, MCF, or MGD) by class by month;
2. Number of customers by month by class;
3. System demand by month;
4. Where applicable, cooling and heating degree days by month, both normal and actual;
5. Actual peak per year by class;
6. Actual generating capability at peak, where applicable;
7. Actual firm purchase power commitments at peak, where applicable;
8. Reserve capacity at peak, based on generating capability, where applicable; and
9. Reserve capacity at peak, based on generating capability plus firm purchase power commitments, where applicable;

- e. For electric utilities, a schedule showing for each generating facility existing currently:

1. Capacity;
2. Fuel;
3. Date installed;
4. System capacity at date installed;
5. System demand at date installed;
6. Annual consumption of system year installed.

- (6) *Expert testimony:* The utility shall submit two (2) copies of the testimony and reports, if any,

of company representatives and outside expert witnesses used to support such filing.  
(Code 1968, § 38-37; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-59. Additional information upon request.**

(a) In connection with each statement of intent filing package for a "major change" in rates, the utility shall make available any or all of the following information to the director or his representative for his inspection or copying upon written request therefor:

- (1) Supporting studies, workpapers, or documentation relied upon by each representative or witness in the presentation of his testimony;
- (2) The utility's books of original entry including the general ledger, subledgers, journals, balance sheets, operating income statements, and monthly trial balances by primary account number, for each month during the test year;
- (3) All workpapers used to derive the utility's adjusted value of invested capital which were not included in the filing package; and
- (4) All workpapers used to derive the utility's test year adjusted operating income which were not included in the filing package.

(b) The utility shall also make its plants, equipment and other properties or any portion thereof designated by the director available for inspection by the director or his representative.  
(Code 1968, § 38-38; Ord. No. 81-1589, § 1, 8-18-81)

**Secs. 37-60—37-70. Reserved.**

**ARTICLE IV. HEARINGS**

**DIVISION 1. GENERALLY**

**Sec. 37-71. Definition.**

As used in this article, "utility" means a "public utility" as that term is defined in the act as to which the city acting through its city council constitutes a regulatory authority having original jurisdiction, or any other public utility not gov-

erned by the act as to which the city has jurisdiction to establish rates or other terms of service.  
(Code 1968, § 38-40; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-72. Scope.**

The provisions of this article shall apply to all situations in which hearings are authorized or required to be conducted by the city as the regulatory authority for a utility whether initiated upon motion of city council, by complaint of any affected person or by the filing of a statement of intent to change rates or other action of a utility.  
(Code 1968, § 38-41; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-73. Expert assistance.**

Pursuant to section 24 of the act, the city council reserves the right to select and engage expert rate consultants, accountants, auditors, attorneys, engineers, or any combination thereof to conduct investigations, present evidence, advise and represent the city council and assist with litigation in rate making proceedings and to require the utility to reimburse the city for the reasonable costs of such services.  
(Code 1968, § 38-42; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-74. Open to public.**

All utility hearings, whether conducted by city council or by an examiner pursuant to division 2 of this article shall be conducted in an open and public manner.  
(Code 1968, § 38-43; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-75. Hearings before city council.**

All utility hearings before city council shall be conducted in regular or special session in accordance with the rules generally applicable to sessions of city council or such other and further rules as the city council may adopt, from time to time, to assure that due process is accorded to all parties.  
(Code 1968, § 38-44; Ord. No. 81-1589, § 1, 8-18-81)

**Secs. 37-76—37-85. Reserved.**

## DIVISION 2. EXAMINERS

### Sec. 37-86. Appointment and availability.

In consonance with the powers of the mayor and the city council conferred by the city charter, the mayor is hereby authorized to appoint, subject to confirmation by the city council, six (6) persons to be examiners in public utility hearings. After such appointment and confirmation, each of such persons shall then be available from time to time, when so instructed by the mayor, to conduct hearings with respect to a specified public utility.

(Code 1968, § 38-50; Ord. No. 81-1589, § 1, 8-18-81)

### Sec. 37-87. Use authorized.

Whenever the city council shall determine that a hearing should be held with respect to a particular public utility, whether upon its own initiative, as a result of a complaint by an affected person or as a result of an application by the public utility, it may, in the ordinance, resolution or motion making such determination, provide that such hearing be conducted before an examiner in accordance with the provisions of this division. If the city council does so provide, the mayor shall designate one of the examiners appointed under this division to conduct such hearing. The examiner thus designated will then call and proceed with such hearing in accordance with the provisions of this division.

(Code 1968, § 38-51; Ord. No. 81-1589, § 1, 8-18-81)

### Sec. 37-88. Designation of time, place, etc. of hearing.

The examiner designated to conduct a hearing under this division shall designate the time, date and place for commencement of such hearing. He may postpone, continue, recess or adjourn such hearing from time to time and to such place or places as in his judgment may be expedient to secure the efficient conduct of the hearing.

(Code 1968, § 38-52; Ord. No. 81-1589, § 1, 8-18-81)

### Sec. 37-89. "Parties at interest" defined.

The term "parties at interest" as used in this division, means and includes the utility whose rates or service standards or other regulated prac-

tices are in issue, the director, their respective legal representatives, and such other persons as may be entitled as a matter of law to participate therein and any other person whose presence is, in the judgment of the examiner, necessary or expedient to the complete resolution of the matters in issue.

(Code 1968, § 38-53; Ord. No. 81-1589, § 1, 8-18-81)

### Sec. 37-90. Notice to parties at interest.

The examiner shall transmit to all parties at interest in any hearing pursuant to this division written notice of the time, date and place of commencement of such hearing. Such notice shall be transmitted to such parties at least seven (7) days prior to the date of commencement of such hearing. After the commencement of any such hearing, the examiner may give such parties such other and further notice of the times, dates and the places of such postponed, continued, recessed or adjourned hearings as in his judgment may be necessary to secure the efficient conduct and continuation of the hearing to its completion.

(Code 1968, § 38-54; Ord. No. 81-1589, § 1, 8-18-81)

### Sec. 37-91. General powers and duties of examiner.

The examiner shall be in attendance at all times during the conduct of a hearing pursuant to this division. He shall preside over and conduct the hearing in an orderly and impartial manner. He may administer oaths, rule upon offers of proof and receive relevant evidence, regulate the course of the hearing and the order of appearance of the parties at interest, hold conferences with the parties at interest for the settlement or simplification of issues, dispose of procedural requests or similar matters, and make such other rulings and take such other action as in the examiner's judgment will materially result in the orderly conduct of an impartial hearing.

(Code 1968, § 38-55; Ord. No. 81-1589, § 1, 8-18-81)

### Sec. 37-92. Attendance and duties of reporter.

The examiner shall arrange for the attendance of a competent shorthand reporter through all hearings under this division. The reporter shall administer oaths, receive and record all statements,

arguments and testimony introduced, receive all exhibits, and transcribe and deliver to the examiner at the close of the evidence, or as soon thereafter as practicable, a complete transcript of all proceedings had in connection with such hearing.

(Code 1968, § 38-56; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-93. General rights of parties at interest.**

In a hearing conducted pursuant to this division, all parties at interest shall have the right to present their respective case or defense, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(Code 1968, § 38-57; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-94. Burden of proof.**

In a hearing conducted pursuant to this division, the burden of proof shall be upon the party at interest advocating a variance from the existing rates, service standards or other regulated practices theretofore established by ordinance. If no such ordinance exists, the burden of proof shall be upon the utility to show, by competent proof, those rates, service standards and other regulated practices that are fair to both the utility and to its customers.

(Code 1968, § 38-58; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-95. Arguments; closing hearing.**

At the close of all evidence in the hearing conducted pursuant to this division, the examiner may, under such rules as in his judgment may be warranted, hear and consider arguments, oral or written, of the respective parties at interest. At the conclusion thereof, the examiner shall declare the hearing closed.

(Code 1968, § 38-59; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-96. Review of record and briefs; preparation and contents of summary report and recommendation.**

When a hearing has been closed as provided in section 38-95, the examiner shall receive from the

shorthand reporter a complete transcript of the record of such hearing as soon as the same has been completed. Upon the receipt thereof, the examiner shall review and study such record, together with any briefs on questions of law as may have been submitted to him by the parties at interest. The examiner shall as soon thereafter as possible prepare a summary report and recommendation to the city council based upon such record. Such summary report and recommendation shall list the examiner's findings and conclusions, shall contain a brief explanation of the reasons for such findings and conclusions and shall contain such recommendations as the examiner desires to make.

(Code 1968, § 38-60; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-97. Preparation and contents of supplemental report and recommendation.**

The examiner may, if he deems it advisable, also prepare a supplemental report and recommendations which may review all material facts and disputed issues of fact and law. Such supplemental report may also include further findings and conclusions thereon and may contain detailed recommendations for the disposition and determination of all material disputed issues, as well as recommendations for the proper disposition of the entire case.

(Code 1968, § 38-61; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-98. Copies of reports to be delivered to parties at interest.**

When the report or reports provided for in this division have been completed by the examiner, he shall deliver copies thereof to all parties at interest in such hearing.

(Code 1968, § 38-62; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-99. Filing of exceptions and objections; transmissions of record to council and permanent filing thereof.**

All parties at interest in a hearing conducted pursuant to this division shall have five (5) days,

exclusive of Saturdays, Sundays and legal holidays, from the date of the delivery of the copies of the reports to them pursuant to section 37-98 of this Code, within which to file with the examiner their respective objections and exceptions, if any, to such reports, or such greater time as the examiner may allow. At the end of such time period, the examiner shall transmit the transcript, together with the exhibits, papers, application, requests, briefs, the examiner's report and recommendations, and all such exceptions and objections as shall have been timely filed with him to the city council for its review and final determination. The records so transmitted to the city council shall constitute the complete record of the hearing upon which the final determination by the city council may be made, and such record shall be permanently filed with the city secretary. (Code 1968, § 38-63; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-100. Reports and recommendations are advisory only; council action on reports and recommendations.**

The examiner's reports and recommendations made pursuant to this division shall be advisory only as to the city council, and the city council may conduct its own hearings and make its own findings and determinations as to all or any aspects of the case including, without limitation, the designation of the parties at interest. (Code 1968, § 38-64; Ord. No. 81-1589, § 1, 8-18-81)

**Secs. 37-101—37-115. Reserved.**

**ARTICLE V. STANDARDS OF SERVICE**

**Sec. 37-116. Definition.**

As used in this article, the term "utility" means a "public utility" as that term is defined in the act as to which the city acting through its city council constitutes a regulatory authority having original jurisdiction. (Code 1968, § 38-70; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-117. Utilities other than gas utilities.**

The city hereby adopts by reference, with the same force and effect as if set out herein, sections 4 (Service) and 5 (special rules) of the Substantive Rules of the Public Utility Commission of Texas insofar as said rules apply to service provided by electric utilities, sewer utilities and water utilities. The definitions established in section 052.02.01.013 of the Substantive Rules of the Public Utility Commission of Texas as now or hereafter amended are also adopted insofar as they apply to the said rules of service which are herein adopted. Any reference in the rules which are adopted by this section to the Texas Public Utility Commission shall be read and construed as a reference to the city. (Code 1968, § 38-71; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-118. Gas utilities.**

The city hereby adopts by reference with the same force and effect as if set out herein section 051.04.03.024 (Quality of Service) of the Substantive Rules of the Texas Railroad Commission for service provided by gas utilities. Any reference in said rules which are hereby adopted to the Texas Railroad Commission shall be read and construed as a reference to the city. (Code 1968, § 38-72; Ord. No. 81-1589, § 1, 8-18-81)

**Sec. 37-119. Non-waiver.**

Nothing contained in this article shall be construed as constituting a surrender of jurisdiction by the city over the regulation of the service provided by any utility. The city reserves the right to adopt local modifications to the regulations which are hereinabove adopted by reference or to supercede the same in whole or in part with local rules to the extent of its jurisdictional area. (Code 1968, § 38-73; Ord. No. 81-1589, § 1, 8-18-81)

**Secs. 37-120—38-200. Reserved.**



## ARTICLE VI. CABLE TELEVISION SERVICES\*

### DIVISION 1. CABLE TELEVISION RATE REGULATION

#### Sec. 37-201. Generally; definitions.

(a) The regulations and procedures established in this article are established to provide for the regulation of certain cable television rates by the city pursuant to the Cable Act (defined below). Recognizing that the regulatory framework provided under the terms of the Cable Act differs materially from that of the utility regulation provided in this chapter generally, the terms of this article shall exclusively govern the city's cable

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\*Editor's note—Ord. No. 00-302, § 2, adopted April 19, 2000 changed the title of Ch. 37, Art. VI from Cable Television Rate Regulation to Cable Television Services. See the Code Comparative Table.

television regulatory process, and the terms of the balance of this chapter shall not apply, except as may be specifically provided in this article.

(b) The following words, terms or phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Basic cable rates* means the charges for a subscription to the basic service tier, the associated equipment and the ancillary services.

*Basic service tier* means the same as provided in the Cable Act and the FCC rules, including by way of example, a separately available basic service tier to which subscription is required for access to any other tier of service, including as a minimum all qualifying must-carry signals, all public, educational and governmental channels, and all domestic television signals other than superstations (as such terms are defined in the FCC rules).

*Benchmark* means the benchmark rate for basic cable rates determined by the FCC pursuant to the FCC rules.

*Cable Act* means the Cable Television Consumer Protection and Competition Act of 1992, as such may be amended from time to time.

*Cable operator* means any person or group of persons:

- (1) Who provides cable service over a cable system and directly or through one (1) or more affiliates owns a significant interest in a cable system; or
- (2) Who otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system.

*Cable system* means a cable television system subject to regulation by franchising authorities under the Cable Act.

*Channel* means a unit of cable service identified and selected by a channel number or similar designation.

*Cost of service showing* means a filing in which the cable operator attempts to show that the costs of providing the basic service tier justifies a higher

rate than allowed under the benchmark rate or the price cap.

*Date of initial regulation* means the date a cable operator is provided the notification of the city's intent to regulate basic cable rates under section 37-202.

*Director* means the director of the department of finance and administration or the director's designee.

*FCC* means the Federal Communications Commission or its successor.

*FCC rules* means the rules promulgated by the FCC relating to the regulation of cable television rates by the city, as such may be amended from time to time.

*Initial basic cable rates* means the rates that a cable operator is charging for the basic service tier, including charges for associated equipment, on the date of initial regulation.

*Price cap* means the ceiling set by the FCC on future increases in basic cable rates regulated by the city, computed in accordance with the FCC rules.

*Submission* means a rate submission from a cable operator regarding regulated cable television rates required by this article.  
(Ord. No. 94-259, § 2, 3-16-94)

#### **Sec. 37-202. Initial review of basic cable rates.**

(a) Upon the certification of the city to regulate basic cable rates by the FCC, the director shall notify all cable operators in the city that the city intends to regulate basic cable rates as authorized by the Cable Act and by this article.

(b) Within thirty (30) days of receiving notice from the director as provided in (a) above, a cable operator shall file with the city secretary a submission consisting of, at a minimum, a complete statement of its current basic cable rates, a summary of its basic cable rates as of September 30, 1992, and supporting material relating to the reasonableness of basic cable rates. The submission shall specify whether the cable operator is re-

questing either a benchmark analysis or a cost of service showing in accordance with the FCC rules.

(c) The director shall review the rate submission and any other materials provided by a cable operator and evaluate the compliance of the operator's rates with this article and the FCC rules. The review shall take one (1) of the following forms depending on the form of submission by the cable operator:

- (1) If a cable operator submits a benchmark analysis, the director shall review and evaluate the submission to determine if the rates (i) are equal to or below the applicable benchmark, (ii) are above the applicable benchmark, and were above the applicable benchmark per-channel charge as of September 30, 1992, or (iii) exceed the applicable benchmark, and were not above the applicable benchmark per-channel charge as of September 30, 1992.
- (2) If a cable operator requests a cost of service showing, the director shall evaluate the cost of service submission to determine if the submitted rates are justified under applicable FCC rules relating to basic cable rates under applicable cost of service criteria. In the absence of definitive FCC rules relating to determinations pursuant to cost of service showings, the director will review and evaluate each submission on a case-by-case basis as to whether the cost of service submission justifies the submitted rates. If the director's review indicates that a lower rate is justified, the director shall specify the justified rate.

(d) The director may require the cable operator to provide any additional information reasonably likely to assist the director in conducting a review of a submission. Failure to timely and responsibly provide requested information shall constitute a violation of this article and may result in an adverse finding.

(e) After completing the review of the cable operator's proposed rates and holding a hearing under section 37-206 below, the director shall make a written report to city council as to the recommended findings relating to the submission.

The city council shall consider the director's recommendations and make findings as required to determine if the submitted rates should be adjusted as described below:

- (1) In a benchmark proceeding, (i) if the city council determines that the submitted rates are equal to or below the applicable benchmark, then the permitted rate shall be the submitted rate; (ii) if the city council determines that the submitted rates are above the applicable benchmark, and were above the applicable benchmark as of September 30, 1992, then the permitted rate is nine-tenths of the per-channel charge in effect on September 30, 1992, but no lower than the benchmark per-channel charge; or (iii) if the city council determines that the submitted rates are above the applicable benchmark, and were not above the applicable benchmark as of September 30, 1992, then the permitted rate is the benchmark rate. Permitted rates shall be adjusted for inflation and other factors as provided in the FCC rules.
- (2) In a cost of service showing, the city council shall find and determine the justified basic service rate. The determination shall be based on standards and criteria under applicable FCC rules relating to cost of service determinations. The rate determined by city council under this paragraph shall be the rate justified by the information available to the city, including a rate lower than the benchmark or the current basic service rates.

(f) Based on its findings and determinations adopted as described in this section, the city council shall adopt an order incorporating its findings and ordering the submitted rates be approved or reduced, as appropriate and stating the reasons for the determination. The city council may further order the refund of rate overpayments, retroactive to the earliest date allowed under the Cable Act and the FCC rules, as provided in section 37-205. The city secretary shall make the order available to the public and publish a summary of the order in a newspaper of general circulation in the city.

(Ord. No. 94-259, § 2, 3-16-94)

**Sec. 37-203. Review of request for changes in basic cable rates.**

(a) After the initial review of its basic cable rates as provided in section 37-202 above, a cable operator wishing to change basic cable rates shall file a request for approval and a rate submission with the city secretary and shall notify all its subscribers subject to the change at least thirty (30) days before the cable operator desires the increase to take effect. The subscriber notice shall be in writing and shall include the name and address of the department. An increase may not be requested more often than annually and not until at least one (1) year after the determination of the initial basic cable rates, unless specifically authorized under the FCC rules or the Cable Act. The request shall take the form of a price-cap analysis, a cost of service showing, or an automatic rate adjustment.

(b) The director shall review the request and rate submission and any other materials submitted by a cable operator to determine if the requested rates are authorized under this article and the FCC rules. The review shall take one (1) of the following forms depending on the form of filing by the cable operator:

- (1) If a cable operator presents its request for a rate increase as being in compliance with the FCC's price cap, the director shall review the rate submission using the price cap analysis in accordance with applicable FCC rules. The director shall conduct the review to determine whether the proposed increase is within or exceeds the price cap established pursuant to the FCC rules.
- (2) If a cable operator requests a cost of service showing, the director shall evaluate the submission to determine if the submitted rate increase is justified under applicable FCC rules relating to increases in basic cable rates under applicable cost of service criteria. In the absence of definitive FCC rules relating to determinations pursuant to cost of service showings, the director will review and evaluate each submission on a case-by-case basis as to whether the cost of service submission justifies the requested increase. If the director's review indicates

that a lower rate is justified, the director shall specify the justified rate.

- (3) If the cable operator submits a request for approval of an automatic rate adjustment pursuant to (f) below, the director shall review the submission for compliance with the specified criteria, and determine if the request qualifies for the automatic adjustment. If the request so qualifies, the automatic adjustment shall become effective as provided in (f) below. If the director determines that the request does not qualify for automatic adjustment, the director shall specify the reasons therefor in the recommendation to city council.

(c) The director may require the cable operator to provide any additional information reasonably likely to assist the director in conducting a review of a submission. Failure to timely and responsively provide requested information shall constitute a violation of this article and may result in denial of the submitted rates.

(d) After completing the review of the cable operator's proposed increase, and holding a hearing as required under section 37-206, below, the director shall make a written report to city council as to the recommended findings related to the submission. The city council shall consider the director's recommendations and make findings as required to determine if the submitted rate increase should be approved, adjusted or rejected as described below:

- (1) If the city council finds that the requested increase is within the price-cap as described in applicable FCC rules, the city council shall approve the proposed increase in basic cable rates. If the city council finds that the proposed increase is not within the price-cap, then the increase in basic cable rates, if any, shall be limited to the maximum amount allowed under the FCC rules related to price-cap increases.
- (2) In a cost of service proceeding, the city council shall find and determine the amount of the increase justified for basic cable rates, if any. The determination shall be based on standards and criteria under applicable

FCC rules relating to cost of service determinations. In the absence of definitive FCC rules relating to determinations pursuant to cost of service showings, findings will be made on a case-by-case basis as to the justified rate. The rate determined by city council under this paragraph shall be the rate justified by the information available to the city, including a rate lower than the price-cap, the requested increase or the current rate level.

- (3) If the director determines that a notification of automatic rate adjustment pursuant to (f) below does not qualify for the requested automatic adjustment, and city council approves the determination, the adjustment will be denied. If the city council does not approve the determination, the increase shall take place in accordance with the FCC rules.

(e) The city council shall adopt an order incorporating its findings under this section and ordering that the request for increased rates be approved, adjusted or rejected, as appropriate, and stating the reason for the determination. The city council may further order the refund of rate overcharges as described in section 37-205 below. The city secretary shall make the order available to the public and publish a summary of the order in a newspaper of general circulation in the city.

(f) Certain rate adjustments may take place automatically, subject to notice and review of the proposed increase as described in subsections (c) and (d) above.

- (1) *Annual inflation adjustment.* A cable operator may annually adjust its basic cable rate to account for inflation in accordance with the gross national product fixed weight price index (GNP-PI), or as otherwise established under applicable FCC rules.
- (2) *Other external costs.* A cable operator may increase its basic cable rate to reflect certain external cost factors to the extent that the increase in cost of those factors exceeds the GNP-PI. These factors include retransmission consent fees, programming costs, state and local taxes applicable to the pro-

vision of cable television service, and costs of franchise requirements. The total cost of an increase in a franchise fee may be automatically added to the base per channel rate, without regard to its relation to the GNP-PI.

The starting date for measuring changes for purposes of the automatic rate adjustments shall be the latest date therefor allowed under the FCC rules. The cable operator shall notify the director at least thirty (30) days in advance of a rate increase based on automatic adjustment items in the same manner as provided in (a) above. The director shall review the increase to determine whether the increase qualifies as an automatic rate adjustment. If the director does not notify the cable operator of an objection to the proposed automatic rate adjustment within thirty (30) days of receiving notice of the adjustment, the adjustment shall go into effect in accordance with applicable FCC rules.

(Ord. No. 94-259, § 2, 3-16-94)

#### **Sec. 37-204. Cable operator information.**

(a) The director may require the cable operator to produce information in addition to that submitted, including proprietary information, if reasonably needed to assist the city in making a rate determination.

(b) A cable operator providing information requested to be kept confidential, including proprietary information, to the director for review in connection with a rate submission may make a written request to the director that the information not be made routinely available for public inspection. The cable operator shall attach a copy of the request to and cover all of the information and all copies of the information to which it applies. If feasible, the cable operator shall physically separate information to which the request applies from any information to which the request does not apply. If separation is not feasible, the portion of the information to which the request applies shall be identified. Each request shall contain a statement of the reasons for withholding inspection and a statement of the facts upon which those reasons are based. Casual requests that are overbroad or otherwise do not

comply with the requirements of this subsection shall not be considered. The request for nondisclosure shall be treated and construed in accordance with applicable state and federal law, including without limitation the FCC rules and the Texas Open Records Act, Ch. 552, Texas Government Code. The burden of showing eligibility for nondisclosure is on the cable operator. (Ord. No. 94-259, § 2, 3-16-94)

**Sec. 37-205. Suspension of proposed rates; refund.**

(a) Any approval of initial basic cable rates or any increase in rates pursuant to a rate submission shall not go into effect until thirty (30) days from the date of submission thereof by the cable operator; provided that, if the director is unable to determine, based on the material submitted by the cable operator, that existing or proposed rates are within the permitted rate or actual cost of equipment under the FCC rules or this article, or if a cable operator has submitted a cost of service showing seeking to justify a rate above the permitted basic service tier, the thirty-day period described above shall be tolled for the periods described in (b) below to request or consider additional information or to consider the comments from interested parties. If the director determines that additional time is needed as described in this section, within thirty (30) days of the submission the director shall issue a written order on behalf of the city specifying the tolled time period and provide written notice of the order to the cable operator.

(b) If the director finds that additional time for review is required under (a) above, the extension shall be for (i) an additional one hundred fifty (150) days beyond the initial thirty (30) days if the form of filing is a cost of service showing, or (ii) an additional ninety (90) days if the form of filing is a benchmark analysis.

(c) If the city has not made a final determination regarding a rate submission during any extension periods provided for in this section, the cable operator may put the submitted rate into effect at the end of such period, subject to refund as provided herein. If the city council subsequently disapproves all or a portion of a submit-

ted rate, or if the cable operator fails to timely comply with a rate order issued by the city, the cable operator shall be required to refund all of the funds collected under the disapproved rate, or the portion thereof disapproved, or funds collected in violation of an order, to the maximum extent allowed under the FCC rules, plus interest. If the director determines that the city council is not likely to reach a final determination regarding a submission before the end of an extension period, the director shall issue a written order to the cable operator before the end of the extension period requiring the cable operator to keep accurate written account of all amounts received by reason of the submitted rates and on whose behalf the amounts are paid. The method for paying any refund and the rate of interest applicable to the refund shall be determined in accordance with the FCC rules. Prior to the city council issuing an order to refund under this subsection, the director shall give written notice to the cable operator thereof, allowing the cable operator an opportunity, not less than ten (10) days, to make written comments regarding such refund.

(Ord. No. 94-259, § 2, 3-16-94)

**Sec. 37-206. Hearings.**

Prior to completing the review of a rate submission, other than a submission solely in connection with an automatic rate adjustment under section 37-203(f), the director shall hold a public hearing, in accordance with rules promulgated by the director, at which time interested parties may submit testimony, in person or in writing, as to the reasonableness of the submitted rates. The hearing shall be open to the public and notice of the hearing shall be published in a newspaper of general circulation in the city at least three (3) days prior to the hearing.

(Ord. No. 94-259, § 2, 3-16-94)

**Sec. 37-207. Burden of proof.**

In connection with any rate submission under this article, a cable operator shall have the burden of proving that its existing or proposed rates comply with the requirements of this article and the FCC rules.

(Ord. No. 94-259, § 2, 3-16-94)

**Sec. 37-208. FCC rules incorporated; FCC proceedings.**

(a) The provisions of the FCC rules relating to the regulation of basic cable services by the city are incorporated in this article by reference. The city may require cable operators and other interested parties to use any applicable forms promulgated by the FCC under the FCC rules in connection with rate proceedings under this article. To the extent that the FCC rules, as presently constituted or as may be amended from time to time, provide the city with added powers to regulate cable television rates and services, such provisions are hereby adopted as if specifically set out herein.

(b) The director may file complaints or initiate or join other proceedings in connection with FCC reviews of relating to nonbasic rates, automatic rate increases or any other cable rate proceedings, as authorized by city council. The director is further authorized to assist others in the preparation of complaint forms and other documentation relating to cable rates and services.

(Ord. No. 94-259, § 2, 3-16-94)

**Sec. 37-209. Experts.**

The director may, with city council approval, engage experts such as rate consultants, accountants, auditors, attorneys, engineers, or other experts to conduct investigations, present evidence, advise and represent the city council and assist the city in the evaluation of rate submissions, FCC proceedings, litigation and related proceedings.

(Ord. No. 94-259, § 2, 3-16-94)

**Sec. 37-210. Notice.**

When notice is required to be given to a cable operator under the terms of this article, the notice shall be given by certified mail, return receipt requested, at the latest address for the cable operator provided to the director in writing.

(Ord. No. 94-259, § 2, 3-16-94)

**Secs. 37-211—37-220. Reserved.**

**DIVISION 2. ACCESS TO PUBLIC,  
EDUCATIONAL, AND GOVERNMENTAL  
CABLE CHANNELS BY OTHER  
MUNICIPALITIES**

**Sec. 37-221. Definitions.**

The following words, terms or phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Applicant municipality* means any municipality that submits an application to the director in substantially the form prescribed in this division.

*Cablecast franchisee* means the applicant municipality's cable television franchisee that will cablecast the city's PEG channel programming.

*CPI* means the Consumer Price Index, Urban Consumers, all items, United States Average, as compiled by the United States Department of Labor, Bureau of Labor Statistics, Washington, D.C. (or, if the CPI is discontinued, the most nearly comparable statistics published by a recognized financial authority selected by the director).

*PEG channel* means a cable television channel reserved for public, educational, or governmental programming and used in accordance with the rules and procedures established by the city.

*PEG channel programmer* means an entity that provides PEG channel programming, including with respect to governmental programming, the city. PEG channel programming means programming provided either by the city or under contract with the city for cablecast on the city's PEG channels.

*Playback facility* means the facility for playback of all pre-recorded programming for a PEG channel and switching of all programming from remote locations that may be required to support PEG channel programming, including, but not limited to, cameras, recording or playback machines and related devices.

*Receiving municipality* means a municipality that receives the city's PEG channel programming under this division.

(Ord. No. 00-302, § 2, 4-19-00)

**Sec. 37-222. Policy.**

It is the policy of the city that PEG channel programming be reasonably available for cablecast through the city's PEG channel playback facilities on the cable systems serving other municipalities. The policies and procedures established in this division are intended to accomplish PEG channel access in a fair and equitable manner without disruption to viewers within the city.

(Ord. No. 00-302, § 2, 4-19-00)

**Sec. 37-223. Application.**

(a) An applicant municipality that desires its cablecast franchisee to obtain PEG channel programming shall submit an application to the director in a form promulgated by the director for that purpose, which shall contain the following information:

- (1) The PEG channel programming the applicant municipality wishes its cablecast franchisee to receive, which need not include all PEG channels;
- (2) The name of the applicant municipality's cablecast franchisee;
- (3) The estimated number of the cablecast franchisee's cable television subscribers located within the applicant municipality;
- (4) A written statement from each PEG channel programmer whose channel is included in the application consenting to the cablecast of its programming as provided in the application and agreeing to accept compensation therefor as provided in this division;
- (5) A written statement from each of the applicant municipality's cablecast franchisees that the cablecast franchisee consents (or is required by the applicant municipality's ordinance) to carry the requested PEG channel programming;
- (6) An indemnification and release in the form prescribed by the city attorney, executed by the cablecast franchisee in favor of the city;
- (7) Written evidence satisfactory to the director that the cable systems of the city and

the applicant municipality are compatible and capable of interconnection without interference with the cable television reception of viewers within the city;

- (8) A certified copy of an ordinance or other official action by the applicant municipality's governing body approving the application and agreeing to abide by the terms of this division and any authorization granted by the city pursuant hereto; and
- (9) Any other information the director determines is reasonably required to facilitate the application.

(b) Application information may be changed before the director's decision becomes final by submission of an amended application.

(Ord. No. 00-302, § 2, 4-19-00)

**Sec. 37-224. Issuance.**

(a) If the director determines that the application complies with the requirements of section 37-223 of this Code, the director shall grant the application and promptly notify the applicant of the decision.

(b) If the director determines that the application does not comply with the requirements of section 37-223 of this Code, the director shall deny the application and promptly notify the applicant of the decision and the specific reason therefor.

(Ord. No. 00-302, § 2, 4-19-00)

**Sec. 37-225. Fees.**

(a) As compensation for access to PEG channel programming, each municipality shall pay the city a fee. During 2000, the fee will be \$.075/subscriber/channel/month. The fee will be adjusted annually by the director to reflect an increase or decrease in the CPI.

(b) The director shall issue regulations relating to the manner in which the fee will be assessed and collected and the manner in which the CPI adjustment shall be calculated and implemented.

(Ord. No. 00-302, § 2, 4-19-00)



**Sec. 37-226. Effect of approval.**

The city will not provide any services under this division other than the use of the playback facility to receive the PEG channel programming and consent to cablecast the municipal channel operated by the city. Any municipality receiving PEG channel programming under this division is responsible for obtaining any and all consents or other authorization necessary to cablecast the requested PEG channel programming. Nothing herein shall be construed to in any way alter the status, responsibilities, duties or liabilities of the respective parties to the municipal franchise agreements under which the cablecast franchisees may operate. Responsibility for compliance with applicable copyright, intellectual property or similar laws remains with the PEG channel programmer. Further, responsibility for certifying that the PEG channel programming does not contain obscene or indecent material or material that is otherwise proscribed by law also remains with the PEG channel programmer.

(Ord. No. 00-302, § 2, 4-19-00)

**Sec. 37-227. No additional obligations.**

The city assumes no obligation to change, reconfigure or otherwise upgrade the playback facility, or to make any interconnection with the cable television system of a municipality to facilitate reception of the PEG channels.

(Ord. No. 00-302, § 2, 4-19-00)

### DIVISION 3. STATE-ISSUED CABLE OR VIDEO FRANCHISES

**Sec. 37-251. Definitions.**

The following words, terms or phrases, when used in this division, shall have the meanings ascribed in this section, except where the context clearly indicates a different meaning:

*Cable service* is defined as set forth in 47 U.S.C. section 522(6).

*Chapter 66* means that portion of Senate Bill 5 enacted by the 79th Texas Legislature in 2nd Called Session, entitled "An Act Relating To

Furthering Competition In the Communications Industry", codified in relevant part as Chapter 66 of the Texas Utilities Code.

*Communications network* means a component or facility that is, wholly or partly, physically located within a public right-of-way and that is used to provide video programming, cable, voice or data service.

*Franchise fee* means the fee payable to the city under Section 66.005 of the Texas Utilities Code.

*In-kind contributions to municipality* means the payments due to the city under Section 66.006 of the Texas Utilities Code.

*Right-of-way* means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the city has an interest.

*Service provider* means:

- (1) A person who provides cable service; or
- (2) A person who distributes video programming services through wireline facilities located wholly or partly in the city's right-of-way without regard to delivery technology.

*State-issued certificate of franchise* means a certificate issued by the Public Utility Commission of Texas or its successor agency with equivalent jurisdiction that authorizes a cable service provider or video service provider to provide cable service or video service within the city pursuant to Chapter 66.

*Video programming* means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, as set forth in 47 U.S.C. section 522(20).

*Video service* means video programming service provided through wireline facilities located wholly or partly in the right-of-way without regard to delivery technology, including internet protocol technology. This definition does not include any video service provided by a commercial mobile service provider as defined in 47 U.S.C. section 332(d).

*Video service provider* means a video-programming distributor that distributes video programming service through wire line facilities located at least in part in the right-of-way without regard to the delivery technology.  
(Ord. No. 06-594, § 2, 6-7-06)

#### **Sec. 37-252. Policy; scope.**

(a) It is the policy of the city to exercise the fullest extent of its authority as a home rule municipality for the benefit of its citizens, in a fair and equitable manner consistent with Chapter 66 and all other applicable law. The omission of specific references to other city ordinances in this division does not affect the operation of any such city ordinances, whether of special or of general application, or the liability thereunder of a holder of a state-issued certificate of franchise who is providing cable or video service within the city.

(b) This division shall apply only to service providers who hold a state-issued certificate of franchise and provide cable or video service within the city.  
(Ord. No. 06-594, § 2, 6-7-06)

#### **Sec. 37-253. Registration.**

(a) A service provider shall provide to the director within 30 days after it first offers cable or video service within the city and shall maintain current thereafter for as long as it offers cable or video service within the city:

- (1) Information identifying the service provider's designated point of contact by name, mailing and physical address, telephone and facsimile transmission numbers and electronic mail address;
- (2) Maps and records maintained in the ordinary course of business for purposes of locating the portions of its communications network that occupy any portion of the right-of-way; and
- (3) A copy of the service provider's certificate of franchise, including all attachments thereto.

(b) The obligation to register with the director as described in subsection (a) of this section is personal to each service provider. A service provider's registration with the city is not transferable.

(Ord. No. 06-594, § 2, 6-7-06)

#### **Sec. 37-254. Notification of transfer of ownership or control.**

A service provider shall provide notice to the director not later than 14 days after a transfer of ownership or control of the service provider. The transferee shall register with the city under section 37-253 of this Code not later than 14 days after the effective date of the transfer. This section does not apply to transfers to a service provider's parent, affiliate or subsidiary.  
(Ord. No. 06-594, § 2, 6-7-06)

#### **Sec. 37-255. Franchise fees; in-kind contributions.**

(a) Each service provider shall pay a franchise fee to the city pursuant to Chapter 66 and shall remit such fee to the director not later than 45 days after the end of the quarter for the preceding calendar quarter in the amount of five percent of the provider's gross revenues as defined in Chapter 66. Each franchise fee payment shall be accompanied by a summary explaining the basis for the calculation of the fee.

(b) The in-kind contributions payable to the city by service providers pursuant to Chapter 66 shall be remitted to the director not later than 45 days after the end of the quarter for the preceding calendar quarter on the applicable per subscriber basis as described in Chapter 66. Each in-kind contribution payment shall be accompanied by a summary explaining the basis for the calculation of the in-kind contribution.

(c) The service provider may designate as a separate line item on customer bills those franchise fees payable and allowed to be recovered from customers under Chapter 66.

(d) The city attorney is authorized to bring suit against a service provider in a court of competent jurisdiction to enforce compliance with all requirements of Chapter 66 except as otherwise provided in section 37-257 of this Code.  
(Ord. No. 06-594, § 2, 6-7-06)

**Sec. 37-256. Reporting and records review.**

(a) Each service provider shall deliver to the director its actual incremental cost of providing institutional network capacity and cable service to public buildings within 15 days of registering with the city.

(b) Each service provider shall produce its business records for review upon 30 days notice from the director; the scope of the review will be limited to the extent necessary to ensure that the service provider is compensating the city in compliance with the law. The city and the service provider shall each bear its own costs of review.  
(Ord. No. 06-594, § 2, 6-7-06)

**Sec. 37-257. City attorney authorized to seek enforcement of prohibition against discrimination.**

The city attorney is authorized to initiate a proceeding before the Texas Public Utility Commission on behalf of the city as an affected person to seek enforcement of the Chapter 66 prohibition against discrimination by any service provider if the city attorney determines that any group of potential residential subscribers has been denied access to service because of the income of the residents in the local area in which such group resides.

(Ord. No. 06-594, § 2, 6-7-06)

**Sec. 37-258. Guidelines regarding use of public, educational and governmental access channels.**

The director is authorized to promulgate reasonable guidelines for the use of public, educational and governmental channels.

(Ord. No. 06-594, § 2, 6-7-06)